

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LAINIE MORTON,

Plaintiff,

-against-

DAVID COHEN and ABOVE ALL BEAUTY, LLC,

Defendants.
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AZRACK, United States District Judge:

For Online Publication Only

ORDER

17-CV-6166 (JMA) (AYS)

**FILED
CLERK**

3/5/2019 4:20 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Before the Court is a motion for default judgment filed by plaintiff Lainie Morton (“Plaintiff”) against defendants David Cohen and Above All Beauty, LLC (“Defendants”) for \$129,500 in compensatory damages, plus interest, attorney’s fees, as well as post-judgment interest. For the reasons stated herein, Plaintiff’s motion is GRANTED.

I. DISCUSSION

A. Defendants Defaulted

Defendants, who have not responded to the motion for default judgment, defaulted by failing to answer, move, appear, or defend in this action.

B. Liability

When a defendant defaults, the Court is required to accept all of the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. Finkel v. Romanowicz, 577 F.3d 79, 84 (2d Cir. 2009). However, the Court also must determine whether the allegations in the complaint establish the defendant’s liability as a matter of law. Id. Here, the allegations in the complaint are sufficient to establish Defendants’ liability for breach of contract,

fraudulent inducement, conversion, intentional misrepresentation and fraud, and breach of fiduciary duty under New York law.

C. Damages

“‘[W]hile a party’s default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages.’” Bricklayers & Allied Craftworkers Local 2, Albany, N.Y. Pension Fund v. Moulton Masonry & Const., LLC, 779 F.3d 182, 189 (2d Cir. 2015) (quoting Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors, Inc., 699 F.3d 230, 234 (2d Cir. 2012)). The Court must conduct an inquiry to “ascertain the amount of damages with reasonable certainty.” Credit Lyonnais Sec., Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999) (citing Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997)).

The Court finds that Plaintiff’s submission—the Affidavit of Jeremy M. Iandolo in Support of Request for Default Judgment—establishes compensatory damages of \$129,500 to a reasonable degree of certainty. (ECF No. 11-1.) The Court also awards interest on that amount calculated at a 9% per annum interest rate from December 12, 2016 through the date of this judgment, totaling \$25,950.31. See N.Y. C.P.L.R. § 5004. The Court declines to award attorney’s fees because the record provides no basis for such an award.

II. CONCLUSION

The Clerk of the Court is respectfully directed to enter judgment against the Defendants as follows: Defendants David Cohen and Above All Beauty, LLC are jointly and severally liable to Plaintiff Lainie Morton for a total of \$155,450.31, consisting of \$129,500 in compensatory damages and \$25,960.31 in interest. Post-judgment interest is also granted and shall be calculated

pursuant to 28 U.S.C. § 1961 as of the date of this Default Judgment until the date of its satisfaction.

The Clerk of Court is directed to close this case and mail a copy of this Order to Defendants at the following address:

Above All Beauty, LLC
Attn: David Cohen
600 North Bicycle Path, Unit C
Port Jefferson Station, New York 11776

SO ORDERED.

Dated: March 5, 2019
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE